

STATE OF MICHIGAN  
COURT OF APPEALS

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JULIAN LAFONTSEE,

Plaintiff-Appellant,

v

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

March 27, 2014

No. 313613

Kent Circuit Court

LC No. 11-010346-NI

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

GLEICHER, J. (*dissenting*).

Plaintiff's complaint sought accrued personal protection no-fault insurance benefits and a declaratory ruling addressing:

- a. The applicability of the No-Fault Act to Plaintiff's claims;
- b. The amount of wage loss benefits, replacement service expenses, medical expenses, no-fault interest, actual attorney fees, or other benefits owed to Plaintiff;
- c. Whether, and in what amount, any reduction, setoffs, or reimbursements may be claimed by Defendant;
- d. Other determinations, orders, and judgments necessary to fully adjudicate the rights of the parties.

The case proceeded to case evaluation pursuant to MCR 2.403. The case evaluation panel rendered an award for plaintiff as follows: "\$85,000 for accrued no fault benefits, and does not include any award for future allowable expenses that have not been incurred." After both parties accepted the panel's evaluation, the circuit court dismissed it with an order providing: "this case is hereby **DISMISSED**. The effect of this order does not preclude Plaintiff from bringing new claims for any future no-fault benefits which have accrued or may accrue after [the case evaluation date]."

Plaintiff contends that the circuit court erred by dismissing his declaratory judgment claim without deciding it. According to the majority's construction of MCR 2.403(M)(1), when

both parties accepted the case evaluation award, the case ended, precluding declaratory relief. I believe that the majority has incorrectly construed MCR 2.403(M)(1), and respectfully dissent.

Plaintiff sought declaratory relief as well as payment for accrued PIP benefits. MCR 2.605(A)(1) provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” A declaratory judgment

enable[s] the parties to obtain adjudication of rights before an actual injury occurs, to settle a matter before it ripens into a violation of the law or a breach of contract, or to avoid multiplicity of actions by affording a remedy for declaring in expedient action the rights and obligations of all litigants. [*Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006).]

In the first-party no-fault context, a declaratory judgment may settle coverage disputes before unnecessary or inappropriate costs are accrued, serving both an insured and an insurer.

In *Manley v DAIIE*, 425 Mich 140, 157; 388 NW2d 216 (1986), the Supreme Court held that when a dispute concerning PIP benefits arises, a court may enter a declaratory judgment “determining that an expense is both necessary and allowable and the amount that will be allowed.” The Supreme Court further explained: “Such a declaration does not oblige a no-fault insurer to pay for an expense until it is actually incurred.” *Id.* *Manley* involved a plaintiff who had suffered a severe closed head injury. *Id.* at 145. The Supreme Court observed that the plaintiff “will not regain his faculties and that some nurse’s aides will probably be required for the rest of his life.” *Id.* at 158. In that case the trial court entered and the Supreme Court reinstated a declaratory judgment ordering payment for the plaintiff’s daily room and board charges and nurses’ aide expenses. The Supreme Court modified the judgment to reflect that “nursing services are payable up to a maximum of \$128 per day, upon submission to DAIIE of bills to substantiate the charges from established nursing companies.” *Id.* at 149-150. Despite entry of the declaratory judgment, the Supreme Court expressed that either the plaintiff or the defendant could seek a “redetermination” of the amounts properly allowable, or whether the plaintiff’s recovery made additional nursing services unnecessary. *Id.* at 158-159.

Post-*Manley*, there should be no doubt that a plaintiff may seek and obtain a declaratory judgment regarding a defendant’s liability for future PIP benefits. Defendant has not challenged that *Manley* affords a no-fault plaintiff the right to seek declaratory judgment.

My disagreement with the majority centers on whether a plaintiff seeking both *accrued* PIP benefits and a declaratory judgment regarding *future* benefits automatically forgoes declaratory judgment by accepting a favorable case evaluation award. The majority holds that “[t]he plain language of the rule required the trial court to dismiss all of plaintiff’s claims in the suit once both parties accepted, and defendant timely paid, the case evaluation award.” I believe that plain language of the Court Rule dictates precisely the opposite conclusion.

Before May 1, 2012, MCR 2.403(M)(1) provided:

If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. *The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered . . . .* [Emphasis added.]

On May 1, 2012, five months before the parties accepted the case evaluation, the Supreme Court amended the court rule by adding important new language specifically applicable to claims for personal protection no-fault insurance benefits:

If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered, *except for cases involving rights to personal protection insurance benefits under MCL 500.3101 et seq., for which judgment or dismissal shall not be deemed to dispose of claims that have not accrued as of the date of the case evaluation hearing.* [Emphasis added.]

In my view, the following sentence preserves plaintiff's right to seek a declaration regarding benefits that have not yet accrued:

The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered, *except for cases involving rights to personal protection insurance benefits under MCL 500.3101 et seq., for which judgment or dismissal shall not be deemed to dispose of claims that have not accrued as of the date of the case evaluation hearing.*

Plaintiff's claim for declaratory judgment seeks to resolve or avoid future controversy regarding defendant's obligation for future as well as accrued benefits. In my view, the Supreme Court added the "except" clause to MCR 2.403(M)(1) to preserve an avenue for a no-fault plaintiff to seek a declaratory ruling regarding future benefits despite satisfaction with a case evaluation award governing accrued benefits. Accordingly, I would reverse the circuit court and remand to permit plaintiff to pursue a declaratory judgment.

/s/ Elizabeth L. Gleicher